



March 30, 2000

Ms. M. Suzy Ingle Rice  
Attorney at Law  
3900 Essex, Suite 1070  
Houston, Texas 77027

OR2000-1247

Dear Ms. Rice:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 135039.

The Walker's Mark Community Association, Inc. (the "association"), a private property owners' association which you represent, received a request from a member of the association for "all bank statements for the last three years and the Member Fees Receivables & Revenue and/or the Member Fees Receivables account records and a copy of all meeting minutes for 1999."<sup>1</sup> You assert that the association is not subject to requirements of the Act. We have considered your arguments and have reviewed the submitted information.

Section 552.0035 of the Act states:

A property owners' association is subject to [the Act] in the same manner as a governmental body if:

- (1) membership in the property owners' association is mandatory for owners or for a defined class of owners of private real property in a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more;
- (2) the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and
- (3) the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local

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<sup>1</sup> Although you did not inform this office of the request, the requestor informed this office and provided for our review a copy of the request.

governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution.

We believe a private property owners' association is subject to the Act only if it meets all three of the above-enumerated requirements. You acknowledge, and we agree, that the association meets the above-enumerated items (1) and (2). You aver the association is not subject to the Act, however, because the association does not meet item (3).

You have provided for our review the original Declaration of Covenants, Conditions and Restrictions for the association (the "declaration"). In relevant part, Article VI, section 3(a) of the declaration states that the "maximum annual [regular] assessment rate for any Assessment Unit owned by an Owner . . . shall be \$1.75 per \$100.00 of Assessed Valuation." Article I, section 1 defines the term "Assessed Valuation" with respect to any calendar year as "the replacement cost [of an Assessment Unit] *determined by the Trustee*<sup>2</sup> as of October 1 of the next previous calendar year." (emphasis added). Thus, under the terms of the original declaration, the maximum annual regular assessment rate was based on the value at which the Trustee assessed the property at issue, and not "the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution." Moreover, you represent to this office that "the amount of the assessment has never been based, in whole or in part, on the value at which the state or local governmental body assesses the property for purposes of ad valorem taxation." You further state that "the [amount of the assessment] is set based on the actual cost of operating the property[.]" Based on these representations and our review of the submitted information, we agree that the association does not meet the above-stated item (3), in that we have no information to indicate that any special or regular assessment is now or has ever been "based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation." We therefore conclude the association is not subject to the requirements of the Act.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

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<sup>2</sup>The Trustee at the time the declaration was executed is indicated to have been Texas Commerce Bank National Association.

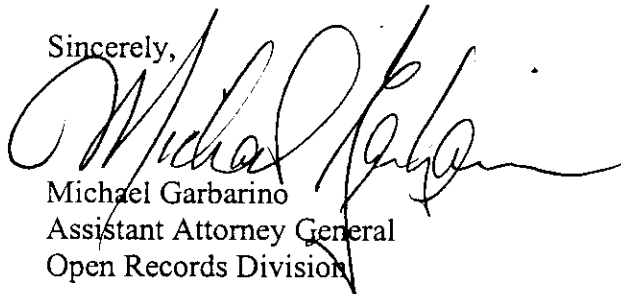
have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/ljp

Ref: ID# 135039

Encl. Submitted documents

cc: Ms. Jennifer (Locke) Wood  
1623 Prairie Mark Lane  
Houston, Texas 77077  
(w/o enclosures)